

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FEB 11 1991

Employer Identification Number: [REDACTED]
Key District: [REDACTED]
Tax Years: [REDACTED]
Form: 1120

Dear Applicant:

This is a final adverse ruling as to your exempt status as described in section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reason(s):

You are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Your operations promote substantial nonexempt non-charitable purposes in that you operate primarily for commercial purposes and serve to benefit a private interest more than incidentally. Further, your net earnings inure to the benefit of a private shareholder or individual.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date

[REDACTED]

that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely yours,

[REDACTED]
[REDACTED]
Director, Exempt Organizations
Technical Division

cc: [REDACTED]

cc: [REDACTED]

cc: [REDACTED]

John

[REDACTED]

[REDACTED]

MAY 25 1990

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. We have concluded that you do not qualify for recognition of exemption as described under that Code section.

You were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your Articles of Incorporation state that your specific purpose is to provide innovative and affordable housing to low income and handicapped persons, including providing housing for pre-release and post-release persons who are or have been incarcerated in prisons, for charitable purposes within the meaning of section 501(c)(3) of the Code.

Your activities involve securing management contracts and becoming co-managing partner of limited partnerships that own property in the State of [REDACTED]. You plan to enter into joint management agreements with owners of qualified property. You will purchase an interest in the partnership of the owner group and act as co-general partner. In your capacity as co-general partner, you will apply for an abatement of all or part of the property taxes against the subject property. The property may be eligible for exemption of its property tax subject to certain restrictions under the [REDACTED] Revenue and Taxation Code.

Under the [REDACTED] Revenue and Taxation Code, a property tax reduction will accrue to the owner of low income tenant housing, which must be passed on to the tenant in the form of lower rents or greater service. In order to qualify for the property tax reduction, the owner must be a non-profit religious, hospital, scientific, or charitable organization or be a limited partnership with an eligible non-profit managing

[REDACTED]

general partner. Such an owner will be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property. A "qualified" property, as provided in the State Code, is one that meets any of the following criteria: (1) twenty percent or more of the occupants of the property are from low income households; (2) the building was acquired, rehabilitated, developed or operated with the use of tax exempt mortgage revenue bonds or other certain public financing; or (3) the property is eligible for and received low income housing tax credits under section 42 of the Internal Revenue Code.

Your formation was initiated by [REDACTED], a practicing real estate attorney. He is your President. You have signed a joint management agreement with [REDACTED]. [REDACTED] is a limited partnership that owns a [REDACTED] unit apartment project. You own [REDACTED] percent as a general partner; [REDACTED] owns [REDACTED] percent as the other general partner. The limited partners of [REDACTED] include [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is the father of [REDACTED]; [REDACTED] and [REDACTED] are the brothers of [REDACTED]; and [REDACTED] is the grandfather of [REDACTED]. [REDACTED] and [REDACTED] jointly own [REDACTED], a real estate firm.

You have contacted closed to [REDACTED] real estate ventures and limited partnership property owners throughout [REDACTED] to act as their general partner so that they may also take advantage of the property tax exemption program. Although many have expressed an interest in your services, you stated that you have currently only consummated one deal other than with [REDACTED] because you need your section 501(c)(3) exemption.

Your management services include evaluating property to determine how the general physical environment can be improved, such as increasing the maintenance, landscaping and security; monitoring the tenants to assure that they qualify as low income or tax credit eligible; and recommending certain improvements to the properties or programs to be instituted. You will perform an inventory and survey of the tenants and their needs to determine which services would be most beneficial to the tenant population. In some areas the tenants will be given rent reduction or their utilities may be paid during unusually high utility bill months. If it is determined that tutoring, child care, job referral, or other

You will receive [REDACTED] percent of all tax savings in the second year under the [REDACTED] agreement. In the other agreement, you have contracted to receive a [REDACTED] percent overhead fee to cover your costs. The balance of [REDACTED] percent of the fees collected will go back for the benefit of the tenants. Your services are provided at a break-even cost. Your financial support will come from the management contracts with the property owners.

Section 501(c)(3) of the Code describes as exempt from federal income tax, as provided under section 501(a), organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt 501(c)(3) purposes. An organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by combatting community deterioration.

Section 1.501(c)(3)-(1)(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business.

Rev. Rul. 68-225, 1968- 2 C.B. 283, provides that consulting services performed for local businesses on matters relating to securing housing for their minority group employees

by a section 501(c)(3) organization does not constitute unrelated trade or business within the meaning of section 513.

Rev. Rul. 70-186, 1970-1 C.B. 128, determines that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualified for exemption under section 501(c)(3), despite the benefit to the lake front homeowners. Any private benefits derived by the lake front property owners was found to be incidental, because the benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. The revenue ruling concluded that it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners.

Rev. Rul. 72-369, 1972-2 C.B. 245, concludes that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. The ruling emphasizes that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. Further, providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3).

Your activities are similar to the activities of the organization described in Rev. Rul. 72-369 in that you are essentially a consulting service and technical advisor to your client property owners. You are engaged in the business of providing such services even though you are organized on a nonprofit basis. As stated in Rev. Rul. 72-369, the provision of managerial and consulting services, even if for a fee at no more than cost, is not an activity that furthers exempt purposes under section 501(c)(3) of the Code. This principle would not change merely because an organization services entities that own low income housing qualifying under State or federal regulations. As stated in section 1.501(c)(3)-1(c)(1) of the regulations, an organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

You can be distinguished from the organization described in Rev. Rul. 68-225. That organization conducted charitable and educational programs that fostered and promoted fair housing in a metropolitan area, in addition to the housing

referral services. Unlike your managing services, its consulting services contributed importantly to the accomplishment of the organization's charitable and educational programs.

Although the services you provide may be beneficial to the community and are undertaken on a nonprofit basis, they cannot be regarded as conferring a charitable benefit on the community unless they directly accomplish one of the established categories of charitable purposes, as delineated in section 1.501(c)(3)-1(d)(2) of the regulations. Thus, section 1.501(c)(3)-1(e) of the regulations does not provide any relief to your situation because you are organized and operated for the primary purpose of furnishing management services, and the operation of this business is not in furtherance of your exempt purposes, but for a business purpose.

You provide substantial benefits to the real estate ventures and limited partnership property owners by essentially providing these entities with a means of reducing their property taxes and providing an easy financial source of maintaining the properties or rent. It is undeniable that your services will save the property owners considerable time and money in seeking to qualify for the property tax exemption and in continuing to qualify under agency standards in regard to lower income and handicapped housing. As such, you serve a private interest more than incidentally, contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Further, the partnership agreements already executed by you, which you indicated are indicative of future transactions, do not contain any language to ensure that you, as managing general partner, will continue to substantially further your exempt purposes rather than those of the limited partners.

Your situation can be distinguished from that described in Rev. Rul. 70-186 in that in the revenue ruling it was impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners. Thus, because the benefits flowed principally to the general public, the private benefits to the lake front homeowners was deemed incidental. Here, many ways could be found to provide and maintain low income handicapped housing without providing such direct assistance and benefits to persons outside of a charitable class.

You also appear to be organized and operated in a manner to further the real estate ventures of your founder and President, ██████████. You entered into a contract as

████████████████████

managing general partner in a limited partnership in which the other general partner is a real estate venture owned by ██████████ and his father and all of the limited partners are related to ██████████. He is also employed as a real estate attorney. Your services help to provide a source of clients for his real estate law practice as well as a source of funds to further the business of ██████████, his real estate venture. Thus, your net earnings inures to the benefit of a private individual.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption from federal income tax as described under section 501(c)(3) of the Code because you are not operated for exempt purposes. You are, therefore, required to file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request a conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice requirements.

You will expedite our receipt of your protest by using the following address: ██████████; Internal Revenue Service; 1111 Constitution Avenue, N.W.; Washington, D.C. 20224.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to the District Director, Los Angeles. Thereafter, any questions about your federal income tax status or the filing of returns should be addressed to that office. Also, the appropriate state officials will be notified of this action in accordance with section 6104(c) of the Code.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "a

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[REDACTED]

declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]

cc: [REDACTED]

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]					
Date	6/20/90	6-25-90					